ORIGIN.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MARK NEWBY, et al., Individually and On Behalf of All Others Similarly Situated, Plaintiffs, vs. ENRON CORP., et al., Defendants.	Civil Action No. H-01-3624 (Consolidated) CLASS ACTION Hon. Melinda Harmon
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, et al., Individually and On Behalf of All Others Similarly Situated, Plaintiffs, vs. KENNETH L. LAY, et al., Defendants.	

MOTION OF DEFENDANT ARTHUR ANDERSEN & CO., INDIA TO DISMISS THE CONSOLIDATED COMPLAINT

Defendant Arthur Andersen & Co., India ("Andersen-India") (sued herein as "Andersen Co. (India)"), by its attorneys Hoguet Newman & Regal, LLP and Schechter McElwee & Shaffer, L.L.P., moves pursuant to Rules 12(b)(2), (4) and (5) of the Federal Rules of Civil Procedure to dismiss the Consolidated Complaint (the "complaint") herein on the grounds that (a)

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service of process has not been made upon Andersen-India, and (b) the Court lacks personal jurisdiction over Andersen-India.

INTRODUCTION

Andersen-India is an independent partnership of Indian chartered accountants organized and existing under the laws of India. It has no presence in the United States, has never been engaged by or done any work for Enron Corp., and had no reason to anticipate being sued halfway around the world in a United States federal court. There exists no basis for this Court to exercise personal jurisdiction over Andersen-India.

Furthermore, Andersen-India has not been served with the summons and complaint. Absent proper service of process, the complaint should be dismissed.

FACTUAL BACKGROUND

A. Andersen-India Has No Contacts With Texas or the United States.

Andersen-India is a partnership of Indian chartered accountants organized and existing under the Indian Partnership Act of 1932. Andersen-India has offices in Mumbai, New Delhi, Bangalore, Chennai and Pune, India. (Parikh Dec., ¶ 2)[1].

Andersen-India has no offices, telephone numbers or listings, agents, employees or representatives in Texas or the United States. (Id., ¶¶ 4-6). Andersen-India does not own, possess or have any interest in any real property, bank accounts or any other assets in Texas or the United States. (Id., ¶¶ 8-9).

Andersen-India does not pay taxes in Texas or the United States, and has no agent authorized to accept service of process in Texas or anywhere in the United States. (Id., ¶¶ 7, 10).

Andersen-India is a separate and distinct entity from Andersen LLP, Andersen Worldwide S.C. and the other Andersen firms named as defendants in the action. (Parikh Dec., ¶ 11). Andersen-India was not engaged by Enron Corp., has not performed any professional services for Enron Corp. and did not participate in any audits of Enron Corp. (Id., ¶ 12). Andersen-India has provided tax services and performed statutory audits and limited agreed upon procedures regarding certain Enron subsidiaries and associated entities in India. (Id.).

B. The Complaint Alleges No Improprieties On the Part of Andersen-India.

The only references to Andersen-India in the complaint are as follows:

> "[Andersen-India] is part of Andersen-Worldwide. Andersen-India participated in the 97-00 audits of Enron." (Complaint, ¶ 92(b)).
>
> "Andersen-India provided services related to the power plant in Dabhol [India]." (Id., ¶ 897).

C. The Summons and Complaint Have Not Been Served on Andersen-India.

The summons and complaint in this action have not been served on Andersen-India or any of its representatives. (Parikh Dec., ¶ 13).

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1 "Parikh Dec." refers to the Declaration of Bobby Parikh dated May 8, 2002 and executed in Mumbai, India, annexed hereto as Exhibit A.

ARGUMENT

I. The Summons and Complaint Have Not Been Served on Andersen-India.

Service of process is a fundamental prerequisite to a court exercising power over a defendant. Murphy Brothers, Inc. v. Michetti Pipe Stringing, Inc., 526 U.S. 344, 350 (1999). "[O]ne becomes a party officially, and is required to take action in that capacity, only upon service of a summons or other authority-asserting measure stating the time within which the party served must appear and defend." Id.

In this case, the summons and complaint have not been served on Andersen-India or any of its representatives. (Parikh Dec., ¶ 13).[2] Insufficiency of process justifies dismissal of the action. Fed. R. Civ. P. 12(b)(5). in particular, dismissal without opportunity to cure is appropriate in instances -- such as the present case -- where personal jurisdiction is otherwise lacking. "Dismissal without opportunity to cure is appropriate where proper service would be futile. Proper service would be futile, for instance, where this court would not have personal jurisdiction over the defendant." Rhodes v. J.P. Sauer & Sohn, Inc., 98 F.Supp.2d 746, 750 (W.D. La. 2000). As is demonstrated below, Andersen-India's lack of any contacts with the United States or Texas demonstrates that this court lacks personal jurisdiction over Andersen-India.

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2 Several hours before this motion was due to be filed, plaintiffs' counsel provided a copy of an affidavit purporting to confirm service upon Andersen-India by delivery to "Carol Gadbois" in Chicago, Illinois. However, Andersen-India has no offices or employees in the United States and no one in the United States is authorized to accept process on its behalf. (See Parikh Dec. ¶¶ 4, 5, 7).

As Andersen-India has not been served, and proper service would in any event be futile, the complaint as against it should be dismissed.

II. This Court Lacks Personal Jurisdiction Over Andersen-India.

Plaintiffs bear the burden of establishing the Court's jurisdiction over Andersen-India. Thompson v. Chrysler Motors Corp., 755 F.2d 1162, 1165 (5th Cir. 1985). The existence of personal jurisdiction over a non-resident defendant is determined by reference to the forum state's long-arm statute and the due process clause of the Fourteenth Amendment. Because Texas' long-arm statute is co-extensive with the due process clause, the question for the Court is whether due process is satisfied. Marathon Oil Company v. A.G. Ruhrgas, 182 F.3d 291, 294 (5th Cir. 1999). As the Court held in Marathon Oil:

> Exercise of personal jurisdiction over nonresident defendants satisfies due process when two requirements are met. First, the nonresident defendant "must have purposefully availed himself of the benefits and protections of the forum state by establishing 'minimum contacts' with that forum state." The defendant's connection with the forum state should be such that he reasonably should anticipate being haled into court there. Second, the exercise of personal jurisdiction over the nonresident defendant cannot offend "'traditional notions of fair play and substantial justice.'"
>
> The "minimum contacts" prong can be subdivided into contacts that give rise to "specific" personal jurisdiction and those that give rise to "general" personal jurisdiction. Exercise of specific jurisdiction is only appropriate when the nonresident's contacts with the forum state arise from or are directly related to the cause of action. General personal jurisdiction is found when the nonresident defendant's contacts with the forum state, even if unrelated to the cause of action, are continuous, systematic, and substantial.

182 F.3d at 294-95. (Footnoted citations omitted).

The Court of Appeals has also held that where suit is based on a federal statute providing for nationwide service of process [3], "the relevant inquiry is whether the defendant has had minimum contacts with the United States". Busch v. Buchman, Buchman & O'Brien, 11 F.3d 1255, 1258 (5th Cir. 1994).[4]

At the core of the analysis is whether a foreign defendant like Andersen-India should reasonably have anticipated being subject to jurisdiction in this Court. As the Supreme Court held in Burger King Corporation v. Rudzewicz, 471 U.S. 462 (1985):

> The Due Process Clause protects an individual's liberty interest in not being subject to the binding judgments of a *472 forum with which he has established no meaningful "contacts, ties, or relations." International Shoe Co. v. Washington, 326 U.S., at 319, 66 S.Ct., at 160. By requiring that individuals have "fair warning that a particular activity may subject [them] to the jurisdiction of a foreign sovereign," Shaffer v. Heitner, 433 U.S. 186, 218, 97 S.Ct 2569, 2587, 53 L.Ed.2d 683 (1977) (STEVENS, J., concurring in judgment), the Due Process Clause "gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit," World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297, 100 S.Ct. 559, 567, 62 L.Ed.2d 490 (1980).

Id. at 471-72.

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3 The Complaint herein alleges, in part, violations of the Securities Exchange Act of 1934, which provides for nationwide process. 15 U.S.C. § 78aa.

4 Busch was subsequently criticized in Bellaire General Hospital v. Blue Cross Blue Shield of Michigan, 97 F.3d 822, 826 (5th Cir. 1996), where the court expressed "grave misgivings regarding the authority" of Busch.

* * *

> In defining when it is that a potential defendant should "reasonably anticipate" out-of-state litigation, the Court frequently has drawn from the reasoning of Hanson v. Denckla, 357 U.S. 235, 253, 78 S.Ct. 1228, 1239-1240, 2 L.Ed.2d 1283 (1958):
>
> > "The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State. The application of that rule will vary with the quality and nature of the defendant's activity, but it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws."
> >
> > This "purposeful availment" requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of "random," "fortuitous," or "attenuated" contacts, Keeton v. Hustler Magazine, Inc., 465 U.S., at 774, 104 S.Ct., at 1478; World-Wide Volkswagen Corp. v. Woodson, supra, 444 U.S., at 299, 100 S.Ct., at 568, or of the "unilateral activity of another party or a third person," Helicopteros Nacionales de Colombia, S.A. v. Hall, supra, 466 U.S., at 417, 104 S.Ct., at 1873.

Id. at 474-75.

In this case, regardless of whether one looks to Andersen-India's contacts with Texas or the United States as a whole, it is obvious that Andersen-India has insufficient contacts with either to confer personal jurisdiction upon this Court. This Court lacks specific jurisdiction because Andersen-India did not engage in any activities in either Texas or the United States, or directed toward Texas or the United States, out of which the plaintiffs' claims may be said to arise.

Likewise, this Court may not exercise general jurisdiction over Andersen-India because it does not have "continuous, systematic and substantial" contacts with either Texas or the United States.

A. The Court Lacks Specific Jurisdiction.

This Court lacks specific jurisdiction over Andersen-India because it is not alleged to have engaged in any acts within Texas or the United States, or which were directed toward Texas or the United States, out of which plaintiffs' claims arise. Calder v. Jones, 465 U.S. 783, 789-90 (1984) (tortious acts "expressly aimed" at the forum jurisdiction establish specific jurisdiction); Wien Air Alaska, Inc. v. Brandt, 195 F.3d 208, 212 (5th Cir. 1999) (specific acts must be directed toward the forum).

The complaint fails to allege any facts under which Andersen-India could be subject to the specific jurisdiction of this Court. In particular, nowhere do plaintiffs allege any facts to support the notion that Andersen-India could reasonably have anticipated being haled halfway around the world to a United States court. The only allegations in the complaint relating to Andersen-India are that it "participated in the 97-00 audits of Enron." (Complaint, ¶ 92(b)) and "provided services related to the power plant in Dabhol [India]" (Id., ¶ 897). First, Andersen-India did not participate in any Enron audits. (Parikh Dec., ¶ 12). And, even if one assumes the allegation to be true -- which it is not -- nowhere is it suggested in the complaint that Andersen-India's alleged "participation" in audits had anything to do with Texas or the United States or involved any improprieties of any kind. Similarly, nowhere do plaintiffs allege that Andersen-India's providing of services in connection with the Dabhol, India power plant project had any

connection to Texas or the United States or involved any improprieties on the part of Andersen-India. To the contrary, the complaint states specifically that only Enron and the "Enron Defendants"[5] acted improperly in connection with Dabhol. (See Complaint at ¶¶ 601-602). In summary, there exists no basis upon which to find that Andersen-India is subject to the specific jurisdiction of this Court.

B. The Court Lacks General Jurisdiction.

This Court also lacks general jurisdiction over Andersen-India because Andersen-India has had no systematic, consistent and substantial contacts with either Texas or the United States. See Marathon Oil, 182 F.3d at 294. Andersen-India is a partnership of chartered accountants organized under the laws of India. (Parikh Dec., ¶ 2). It does not own, possess or have any interest in real property, bank accounts or any other assets in either Texas or the United States. (Id., ¶¶ 8-9). It is not registered to do business in either the United States or Texas, and does not maintain an agent to receive service of process in either Texas or the United States. (Id., ¶¶ 3, 7). Andersen-India has no agents, employees or representatives in Texas or the United States and it pays no taxes in Texas or the United States. (Id., ¶¶ 4, 10).

As Andersen-India has no sustained and substantial contacts with either Texas or the United States, general jurisdiction is not present. The complaint should be dismissed.

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5 The Complaint defines the "Enron Defendants" as Enron's top executives and directors. (Complaint, ¶ 1(a)).

CONCLUSION

For the foregoing reasons, defendant Andersen- India respectfully requests that this Court grant its motion to dismiss and enter an order dismissing the Consolidated Complaint as against it with prejudice.

Dated: May 8, 2002

Respectfully submitted,

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CERTIFICATE OF SERVICE

Ellen Calderon hereby certifies that on May 8, 2002, I caused to be served the attached Motion to Dismiss of Andersen & Co., India upon the following attorneys by causing it to be delivered by telecopier and overnight Federal Express courier:

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Dated: New York, New York
May 8, 2002

Ellen Calderon
ELLEN CALDERON

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MARK NEWBY, et al., Individually and On Behalf of All Others Similarly Situated, Plaintiffs, vs. ENRON CORP., et al., Defendants.	Civil Action No. H-01-3624 (Consolidated) CLASS ACTION Hon. Melinda Harmon
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, et al., Individually and On Behalf of All Others Similarly Situated, Plaintiffs, vs. KENNETH L. LAY, et al., Defendants.	**DECLARATION OF BOBBY PARIKH IN SUPPORT OF ANDERSEN-INDIA'S MOTION TO DISMISS THE COMPLAINT**

BOBBY PARIKH declares, under penalty of perjury under the laws of the United States of America pursuant to 28 U.S.C. § 1746, as follows:

1. I am the managing partner of Arthur Andersen & Co., India ("Andersen-India"). I submit this Declaration in support of Andersen-India's motion to dismiss the Consolidated Complaint (the "complaint"). I have personal knowledge of the facts set forth herein.

2. Andersen-India is a partnership of Indian chartered accountants formed under the Indian Partnership Act of 1932. Andersen-India has offices in Mumbai, New Delhi, Bangalore, Chennai and Pune, India.

3. Andersen-India is not registered to do business in Texas or the United States.

4. Andersen-India has no agents, employees or representatives in either Texas or the United States.

5. Andersen-India has no offices in either Texas or the United States.

6. Andersen-India has no telephone numbers or listings in Texas or the United States.

7. Andersen-India has no agent authorized to receive service of process in Texas or anywhere in the United States.

8. Andersen-India does not own, possess or have any interest in any real property in Texas or the United States.

9. Andersen-India does not own, possess or have any interest in any bank accounts or other assets in Texas or the United States.

10. Andersen-India does not pay any taxes in either Texas or the United States.

11. Andersen-India is a separate and distinct entity from Andersen LLP, and also from Andersen Worldwide SC, and from other Andersen firms named as Defendants in the Complaint.

12. During the period complained of in the complaint ie 1997 to 2000, Andersen-India was not engaged by Enron Corp. and has not performed any professional services for Enron Corp. Andersen-India did not participate in any audits of Enron Corp. Andersen-India has provided tax services, and performed statutory audits and limited agreed upon procedures in respect of certain Enron subsidiaries and associated entities in India.

13. Neither Andersen-India, nor to my knowledge any of its partners, has been served with a summons and complaint in this action.

Dated: Mumbai, India
May 8, 2002

BOBBY PARIKH